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FILED  
STATE OF CALIFORNIA  
PHYSICIAN ASSISTANT BOARD  
SACRAMENTO Jan. 3 2020  
BY K. Voong ANALYST

8 **BEFORE THE**  
9 **PHYSICIAN ASSISTANT BOARD**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 950-2017-001532

13 **VALERIE CASTRO HERNANDEZ, P.A.**  
14 **P.O. Box 11321**  
15 **Whittier, CA 90603**

**A C C U S A T I O N**

16 **Physician Assistant License No. PA 18344,**

17 **Respondent.**

18 **PARTIES**

19 1. Maureen L. Forsyth (Complainant) brings this Accusation solely in her official  
20 capacity as the Executive Officer of the Physician Assistant Board, Department of Consumer  
21 Affairs (Board).

22 2. On or about February 1, 2006, the Physician Assistant Board issued Physician  
23 Assistant License Number PA 18344 to Valerie Castro Hernandez, P.A. (Respondent). The  
24 Physician Assistant License was in full force and effect at all times relevant to the charges  
brought herein and will expire on May 31, 2021, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board, under the authority of the following  
27 laws. All section references are to the Business and Professions Code (Code) unless otherwise  
28 indicated.

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1 (c) Repeated negligent acts. To be repeated, there must be two or more  
2 negligent acts or omissions. An initial negligent act or omission followed by a  
3 separate and distinct departure from the applicable standard of care shall constitute  
4 repeated negligent acts.

5 (1) An initial negligent diagnosis followed by an act or omission medically  
6 appropriate for that negligent diagnosis of the patient shall constitute a single  
7 negligent act.

8 (2) When the standard of care requires a change in the diagnosis, act, or  
9 omission that constitutes the negligent act described in paragraph (1), including, but  
10 not limited to, a reevaluation of the diagnosis or a change in treatment, and the  
11 licensee's conduct departs from the applicable standard of care, each departure  
12 constitutes a separate and distinct breach of the standard of care.

13 (d) Incompetence.

14 (e) The commission of any act involving dishonesty or corruption which is  
15 substantially related to the qualifications, functions, or duties of a physician and  
16 surgeon.

17 (f) Any action or conduct which would have warranted the denial of a  
18 certificate.

19 (g) The practice of medicine from this state into another state or country  
20 without meeting the legal requirements of that state or country for the practice of  
21 medicine. Section 2314 shall not apply to this subdivision. This subdivision shall  
22 become operative upon the implementation of the proposed registration program  
23 described in Section 2052.5.

24 (h) The repeated failure by a certificate holder, in the absence of good cause, to  
25 attend and participate in an interview by the board. This subdivision shall only apply  
26 to a certificate holder who is the subject of an investigation by the board.

27 7. Section 2266 of the Code states: The failure of a physician and surgeon to maintain  
28 adequate and accurate records relating to the provision of services to their patients constitutes  
unprofessional conduct.

8. Section 3501 of the Code states, in pertinent part:

(a) As used in this chapter:

(1) "Board" means the Physician Assistant Board.

...

(4) "Physician assistant" means a person who meets the requirements of this  
chapter and is licensed by the board.

...

(6) "Supervision" means that a licensed physician and surgeon oversees the  
activities of, and accepts responsibility for, the medical services rendered by a  
physician assistant.

1 (7) "Regulations" means the rules and regulations as set forth in Chapter 13.8  
2 (commencing with Section 1399.500) of Title 16 of the California Code of  
3 Regulations.

4 (10) "Delegation of services agreement" means the writing that delegates to a  
5 physician assistant from a supervising physician the medical services the physician  
6 assistant is authorized to perform consistent with subdivision (a) of Section 1399.540  
7 of Title 16 of the California Code of Regulations.

8 (11) "Other specified medical services" means tests or examinations performed  
9 or ordered by a physician assistant practicing in compliance with this chapter or  
10 regulations of the Medical Board of California promulgated under this chapter.

11 (12) "Medical records review meeting" means a meeting between the  
12 supervising physician and surgeon and the physician assistant during which medical  
13 records are reviewed to ensure adequate supervision of the physician assistant  
14 functioning under protocols. Medical records review meetings may occur in person or  
15 by electronic communication.

16 (b) A physician assistant acts as an agent of the supervising physician when  
17 performing any activity authorized by this chapter or regulations adopted under this  
18 chapter.

19 9. Section 3502 of the Code states, in pertinent part:

20 (a) Notwithstanding any other law, a physician assistant may perform those  
21 medical services as set forth by the regulations adopted under this chapter when the  
22 services are rendered under the supervision of a licensed physician and surgeon who  
23 is not subject to a disciplinary condition imposed by the Medical Board of California  
24 prohibiting that supervision or prohibiting the employment of a physician assistant.  
25 The medical record, for each episode of care for a patient, shall identify the physician  
26 and surgeon who is responsible for the supervision of the physician assistant. (a) As  
27 used in this chapter:

28 (2) The supervising physician and surgeon shall be physically available to the  
physician assistant for consultation when that assistance is rendered. A physician  
assistant assisting a doctor of podiatric medicine shall be limited to performing those  
duties included within the scope of practice of a doctor of podiatric medicine.

(c) (1) A physician assistant and his or her supervising physician and surgeon  
shall establish written guidelines for the adequate supervision of the physician  
assistant. This requirement may be satisfied by the supervising physician and surgeon  
adopting protocols for some or all of the tasks performed by the physician assistant.  
The protocols adopted pursuant to this subdivision shall comply with the following  
requirements:

(A) A protocol governing diagnosis and management shall, at a minimum,  
include the presence or absence of symptoms, signs, and other data necessary to  
establish a diagnosis or assessment, any appropriate tests or studies to order, drugs to  
recommend to the patient, and education to be provided to the patient.

(B) A protocol governing procedures shall set forth the information to be

provided to the patient, the nature of the consent to be obtained from the patient, the preparation and technique of the procedure, and the followup care.

(C) Protocols shall be developed by the supervising physician and surgeon or adopted from, or referenced to, texts or other sources.

(D) Protocols shall be signed and dated by the supervising physician and surgeon and the physician assistant.

(2) (A) The supervising physician and surgeon shall use one or more of the following mechanisms to ensure adequate supervision of the physician assistant functioning under the protocols:

(i) The supervising physician and surgeon shall review, countersign, and date a sample consisting of, at a minimum, 5 percent of the medical records of patients treated by the physician assistant functioning under the protocols within 30 days of the date of treatment by the physician assistant.

(ii) The supervising physician and surgeon and physician assistant shall conduct a medical records review meeting at least once a month during at least 10 months of the year. During any month in which a medical records review meeting occurs, the supervising physician and surgeon and physician assistant shall review an aggregate of at least 10 medical records of patients treated by the physician assistant functioning under protocols. Documentation of medical records reviewed during the month shall be jointly signed and dated by the supervising physician and surgeon and the physician assistant.

(iii) The supervising physician and surgeon shall review a sample of at least 10 medical records per month, at least 10 months during the year, using a combination of the countersignature mechanism described in clause (i) and the medical records review meeting mechanism described in clause (ii). During each month for which a sample is reviewed, at least one of the medical records in the sample shall be reviewed using the mechanism described in clause (i) and at least one of the medical records in the sample shall be reviewed using the mechanism described in clause (ii).

(B) In complying with subparagraph (A), the supervising physician and surgeon shall select for review those cases that by diagnosis, problem, treatment, or procedure represent, in his or her judgment, the most significant risk to the patient.

(3) Notwithstanding any other law, the Medical Board of California or the board may establish other alternative mechanisms for the adequate supervision of the physician assistant.

...

(f) Compliance by a physician assistant and supervising physician and surgeon with this section shall be deemed compliance with Section 1399.546 of Title 16 of the California Code of Regulations.

10. Section 3527 of the Code states, in pertinent part:

...

(c) The Medical Board of California may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon, an approval to supervise a

1 physician assistant, after a hearing as required in Section 3528, for unprofessional  
2 conduct, which includes, but is not limited to, a violation of this chapter, a violation  
3 of the Medical Practice Act, or a violation of the regulations adopted by the board or  
4 the Medical Board of California.

5 ...

#### 6 REGULATORY PROVISIONS

7 11. Section 1399.540 of Title 16 of the California Code of Regulations states:

8 1399.540. Limitation on Medical Services.

9 (a) A physician assistant may only provide those medical services which he or  
10 she is competent to perform and which are consistent with the physician assistant's  
11 education, training, and experience, and which are delegated in writing by a  
12 supervising physician who is responsible for the patients cared for by that physician  
13 assistant.

14 (b) The writing which delegates the medical services shall be known as a  
15 delegation of services agreement. A delegation of services agreement shall be signed  
16 and dated by the physician assistant and each supervising physician. A delegation of  
17 services agreement may be signed by more than one supervising physician only if the  
18 same medical services have been delegated by each supervising physician. A  
19 physician assistant may provide medical services pursuant to more than one  
20 delegation of services agreement.

21 (c) The board or Medical Board of California or their representative may  
22 require proof or demonstration of competence from any physician assistant for any  
23 tasks, procedures or management he or she is performing.

24 (d) A physician assistant shall consult with a physician regarding any task,  
25 procedure or diagnostic problem which the physician assistant determines exceeds his  
26 or her level of competence or shall refer such cases to a physician.

27 12. Section 1399.541 of Title 16 of the California Code of Regulations states:

28 1399.541. Medical Services Performable.

Because physician assistant practice is directed by a supervising physician, and  
a physician assistant acts as an agent for that physician, the orders given and tasks  
performed by a physician assistant shall be considered the same as if they had been  
given and performed by the supervising physician. Unless otherwise specified in  
these regulations or in the delegation or protocols, these orders may be initiated  
without the prior patient specific order of the supervising physician.

In any setting, including for example, any licensed health facility, out-patient  
settings, patients' residences, residential facilities, and hospices, as applicable, a  
physician assistant may, pursuant to a delegation and protocols where present:

(a) Take a patient history; perform a physical examination and make an  
assessment and diagnosis therefrom; initiate, review and revise treatment and therapy  
plans including plans for those services described in Section 1399.541(b) through  
Section 1399.541(i) inclusive; and record and present pertinent data in a manner  
meaningful to the physician.

1 (b) Order or transmit an order for x-ray, other studies, therapeutic diets,  
2 physical therapy, occupational therapy, respiratory therapy, and nursing services.

3 (c) Order, transmit an order for, perform, or assist in the performance of  
4 laboratory procedures, screening procedures and therapeutic procedures.

5 (d) Recognize and evaluate situations which call for immediate attention of a  
6 physician and institute, when necessary, treatment procedures essential for the life of  
7 the patient.

8 (e) Instruct and counsel patients regarding matters pertaining to their physical  
9 and mental health. Counseling may include topics such as medications, diets, social  
10 habits, family planning, normal growth and development, aging, and understanding of  
11 and long-term management of their diseases.

12 (f) Initiate arrangements for admissions, complete forms and charts pertinent to  
13 the patient's medical record, and provide services to patients requiring continuing  
14 care, including patients at home.

15 (g) Initiate and facilitate the referral of patients to the appropriate health  
16 facilities, agencies, and resources of the community.

17 (h) Administer or provide medication to a patient, or issue or transmit drug  
18 orders orally or in writing in accordance with the provisions of subdivisions (a)-(f),  
19 inclusive, of Section 3502.1 of the Code.

20 (i)(1) Perform surgical procedures without the personal presence of the  
21 supervising physician which are customarily performed under local anesthesia. Prior  
22 to delegating any such surgical procedures, the supervising physician shall review  
23 documentation which indicates that the physician assistant is trained to perform the  
24 surgical procedures. All other surgical procedures requiring other forms of anesthesia  
25 may be performed by a physician assistant only in the personal presence of a  
26 supervising physician.

27 (2) A physician assistant may also act as first or second assistant in surgery  
28 under the supervision of a supervising physician. The physician assistant may so act  
without the personal presence of the supervising physician if the supervising  
physician is immediately available to the physician assistant. "Immediately available"  
means the physician is physically accessible and able to return to the patient, without  
any delay, upon the request of the physician assistant to address any situation  
requiring the supervising physician's services.

13. Section 1399.545 of Title 16 of the California Code of Regulations states:

1399.545. Supervision Required.

(a) A supervising physician shall be available in person or by electronic  
communication at all times when the physician assistant is caring for patients.

(b) A supervising physician shall delegate to a physician assistant only those  
tasks and procedures consistent with the supervising physician's specialty or usual  
and customary practice and with the patient's health and condition.

(c) A supervising physician shall observe or review evidence of the physician  
assistant's performance of all tasks and procedures to be delegated to the physician  
assistant until assured of competency.

1 (d) The physician assistant and the supervising physician shall establish in  
2 writing transport and back-up procedures for the immediate care of patients who are  
3 in need of emergency care beyond the physician assistant's scope of practice for such  
4 times when a supervising physician is not on the premises.

5 (e) A physician assistant and his or her supervising physician shall establish in  
6 writing guidelines for the adequate supervision of the physician assistant which shall  
7 include one or more of the following mechanisms:

8 (1) Examination of the patient by a supervising physician the same day as care  
9 is given by the physician assistant;

10 (2) Countersignature and dating of all medical records written by the  
11 physician assistant within thirty (30) days that the care was given by the physician  
12 assistant;

13 (3) The supervising physician may adopt protocols to govern the performance  
14 of a physician assistant for some or all tasks. The minimum content for a protocol  
15 governing diagnosis and management as referred to in this section shall include the  
16 presence or absence of symptoms, signs, and other data necessary to establish a  
17 diagnosis or assessment, any appropriate tests or studies to order, drugs to  
18 recommend to the patient, and education to be given the patient. For protocols  
19 governing procedures, the protocol shall state the information to be given the  
20 patient, the nature of the consent to be obtained from the patient, the preparation and  
21 technique of the procedure, and the follow-up care. Protocols shall be developed by  
22 the physician, adopted from, or referenced to, texts or other sources. Protocols shall  
23 be signed and dated by the supervising physician and the physician assistant. The  
24 supervising physician shall review, countersign, and date a minimum of 5% sample  
25 of medical records of patients treated by the physician assistant functioning under  
26 these protocols within thirty (30) days. The physician shall select for review those  
27 cases which by diagnosis, problem, treatment or procedure represent, in his or her  
28 judgment, the most significant risk to the patient;

(4) Other mechanisms approved in advance by the board.

(f) The supervising physician has continuing responsibility to follow the  
progress of the patient and to make sure that the physician assistant does not  
function autonomously. The supervising physician shall be responsible for all  
medical services provided by a physician assistant under his or her supervision.

### **COST RECOVERY**

14. Section 125.3 of the Code states, in pertinent part, that the Board may request the  
administrative law judge to direct a licensee found to have committed a violation or violations of  
the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
enforcement of the case.

### **FIRST CAUSE FOR DISCIPLINE**

#### **(Repeated Negligent Acts)**

15. Respondent has subjected her Physician Assistant License to disciplinary action under



1 Code sections 3527, 2227 and 2234, subdivision (c), in that she has committed repeated negligent  
2 acts, as more particularly alleged hereinafter:

3 Patient A<sup>1</sup>

4 16. On or about October 28, 2015, Respondent saw Patient A, a 47-year-old woman, at  
5 the Pomona Mission Medical Clinic for family planning. The history and physical examination  
6 section of the chart note was limited, a gynecological examination was absent and vital signs  
7 were incomplete. The assessment was listed as family planning and the plan included oral  
8 contraceptive pills, lab tests and counseling.

9 17. A report, dated October 29, 2015, showed several abnormal laboratory results,  
10 including a critical fasting glucose level of 404 ml/dl, elevated cholesterol, and triglycerides.  
11 Respondent's supervisor, Physician 1, reviewed these results on or about November 2, 2015, and  
12 signed the laboratory report showing a glucose fasting result of 404; he circled the abnormal labs,  
13 and the return STAT box on the stamp.

14 18. On or about November 18, 2015, Respondent saw Patient A again at a follow up visit.  
15 The history and physical sections of the chart were incomplete. She documented that results were  
16 explained. However, no gynecologic examination or PAP smear was performed. Her assessment  
17 included family planning. Her management plan included continuation of condoms, no oral  
18 contraceptives, and another follow up in three months for treatment of Patient A's blood sugar  
19 levels.

20 19. On or about October 28, 2015 and thereafter, Respondent committed the following  
21 negligent acts in connection with Patient A: (a) failing to adequately follow up with Patient A and  
22 manage her abnormal test results in a timely manner and coordinate further management; (b)  
23 failing to be adequately supervised by a physician; (c) failing to keep adequate and accurate  
24 medical records; and (d) failing to adequately examine and/or assess the patient, and/or document  
25 the same.

26 20. The medical records of Patient A were incomplete and not clearly legible. The

27 <sup>1</sup> Patients are designated by letters to address privacy concerns. Medical professionals  
28 other than Respondent are designated by numbers. Identities are known to Respondent and/or  
will be disclosed in response to a request for discovery.

1 history and physical information was lacking, medications were not listed, and management of  
2 abnormal results poorly documented. For instance, the patient's medical history, family history,  
3 contraceptive history, habits, sexual history, and information regarding medications were not  
4 adequately documented. The physical examination records were incomplete, and reflected a  
5 failure to adequately record the patient's vital signs and gynecologic exam (which was not even  
6 performed).

7 21. Further, Patient A's lab results revealed abnormalities, including a critically high  
8 glucose level. However, Respondent failed to adequately follow up and manage these  
9 abnormalities in a timely manner. She should have determined that a critically elevated glucose  
10 required immediate management, including consultation with her supervising physician, as well  
11 as following an adequate management protocol for elevated blood sugar, including timely follow  
12 up. Failure to follow up these abnormal test results in a timely and adequate manner could have  
13 led to delays in treatment and diagnosis and exposed Patient A's health to significant risk.

14 22. On or about March 7, 2019, a Department of Consumer Affairs investigator  
15 interviewed Physician 1. Physician 1 stated that he worked at the Pomona Mission Medical  
16 Clinic from in or around April 2015 through in or around April 2018. He further stated that in  
17 addition to treating patients, he supervised Respondent during the time period when Patient A  
18 received treatment at the clinic. Physician 1 did not write the Delegation of Service Agreement  
19 (DSA) for Respondent. Instead, the unlicensed wife of Physician 2<sup>2</sup> (who had been impaired and  
20 unable to practice since at least 2017) presented the completed DSA for Physician 1, and he  
21 signed the DSA. Physician 1 did not question the services delegated to Respondent in the DSA.

22 23. On or about March 19, 2019, a Department of Consumer Affairs investigator  
23 interviewed Respondent. Regarding her care and treatment of Patient A, Respondent  
24 acknowledged that the lab results reflected very high blood sugar results, but stated, "We can't

25 <sup>2</sup> Physician 2 surrendered his medical license to the Board effective February 7, 2018.  
26 Respondent stated in a declaration under the penalty of perjury that in January 2012, she began  
27 employment as a physician assistant at Pomona Mission Medical Clinic and that since  
28 Physician 1 joined the practice in 2015, she had not witnessed Physician 2 render care to any  
patient, nor had he consulted and assisted on any patient care matters, and that if she had an  
emergency or require assistance from a physician, she consulted with Physician 1 exclusively.

1 just give them insulin, you know, we have to do a consult and [Patient A] would have to pay out  
2 of pocket for the consult.” Patient A was a Family PACT<sup>3</sup> patient and Respondent stated that  
3 Family PACT does not cover insulin and that patients need to see their primary care physician for  
4 treatment. In any event, Respondent stated that Patient A stopped coming to the clinic.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Failure to Maintain Adequate Medical Records)**

7 24. Respondent is subject to disciplinary action under Code section 2266 in that  
8 Respondent failed to maintain adequate and accurate records related to the provision of medical  
9 services to a patient. The circumstances are as follows:

10 25. The allegations of the First Cause for Discipline, inclusive, are incorporated herein by  
11 reference as if fully set forth.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(General Unprofessional Conduct)**

14 26. Respondent is subject to disciplinary action under Code section 2234, in that her  
15 actions and/or omissions represent unprofessional conduct, generally. The circumstances are as  
16 follows:

17 27. The allegations of the First and Second Causes for Discipline are incorporated herein  
18 by reference as if fully set forth.

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26 <sup>3</sup> The Family Planning, Access, Care, and Treatment (Family PACT) program is  
27 California’s innovative approach to provide comprehensive family planning services to eligible  
28 low income (under 200% federal poverty level) residents. Family PACT serves 1.1 million  
income eligible Californians of childbearing age through a network of 2,200 public and private  
providers. Services include comprehensive education, assistance, and services relating to family  
planning.

**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physician Assistant Board issue a decision:

1. Revoking or suspending Physician Assistant License Number PA 18344, issued to Valerie Castro Hernandez, P.A.;
2. Ordering Valerie Castro Hernandez, P.A. to pay the reasonable costs of the investigation and enforcement of the case;
3. Ordering Valerie Castro Hernandez, P.A., if placed on probation, to pay the Board the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: JANUARY 03 2020

  
MAUREEN L. FORSYTH  
Executive Officer  
Physician Assistant Board  
Department of Consumer Affairs  
State of California  
*Complainant*

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